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BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554

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APR 23 1995

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

In the Matter of )  
 )  
Implementation of Section 309(j) ) PP Docket No. 93-253  
of the Communications Act )  
Competitive Bidding )

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COMMENTS ON EMERGENCY PETITION FOR WAIVER

U.S. Intelco Networks Inc. ("USIN"), on behalf of itself and its Independent Telephone Company owners and users respectfully submits the following Comments in response to the Commission's Public Notice, DA 95-651, released March 29, 1995, seeking Comments regarding the Telephone Electronics Corporation ("TEC") Emergency Petition for Waiver ("TEC Petition") filed on March 28, 1995. USIN supports TEC's limited request to participate in the Broadband PCS C and F Block auctions because it qualifies as a rural telephone company, and proposes that clarification of the Commission's Rules demonstrates TEC is qualified to seek licenses in the BTAs where it provides telephone service.

USIN is wholly owned by 282 ITCs and provides customer database services, calling card billing validation services, 800 RESPORG services, revenue administration services and other related database services to over 1000 Independents nationwide. USIN has demonstrated its commitment to the deployment of advanced telecommunications services throughout rural America by its initiative and participation in the implementation of an Independent SS7 network and related database services which have ensured the availability of line information database (LIDB) and

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800 database services to customers served by rural ITCs. Similarly, USIN is equally committed to assisting rural telecommunications providers in bringing personal communications services to rural America. Accordingly, USIN has fully participated in this proceeding, specifically addressing concerns related to rural telephone company deployment of PCS.

TEC has requested a limited waiver of the Commission's Rules regarding the PCS auctions to the extent necessary to enable its rural telephone companies to bid on C and F Channel licenses only in those BTAs where they provide telephone service and which have a census population of less than 300,000. TEC is concerned that the Commission's Rules currently do not permit their rural telephone companies to participate because the inclusion of the gross revenues of TEC's non-rural telephone company affiliates together with their telephone company revenues exceed the gross revenue cap of \$125 million in each of the last two calendar years. The Commission has placed this revenue cap requirement, in general, on participation in the C and F Block auctions.

Although the gross revenue of all TEC affiliates exceeds this cap, TEC's six rural telephone companies collectively serve fewer than 100,000 access lines and, therefore, comply with the Commission's definition of a "rural telephone company".<sup>1</sup> USIN respectfully submits that it was not the Commission's intent for its rules to be applied in a manner that precludes TEC from participating in the C and F Block auctions in the BTAs that

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<sup>1</sup>/ 47 C.F.R. § 24.720(e).

include its telephone service areas. Section 24.714 of the Commission's Rules, which addresses partitioning, demonstrates the clear intent of the Commission to comply with the Congressional mandate by promoting the ability of all rural telephone companies to obtain PCS spectrum in areas where they provide service. It is doubtful that the Commission intended that TEC's rural telephone companies could only obtain 30 mhz spectrum licenses by participating in auctions for the larger MTAs against deeper pocket bidders or by relying on the goodwill of other auction winners to partition their spectrum. To the contrary, the Commission's desire to foster participation by rural telephone companies in the deployment of PCS service indicates the intent that all rural telephone companies should qualify to participate in the auction of C and F licenses in the BTAs that include their service areas.

Accordingly, USIN respectfully urges the Commission to clarify that its Rules do permit TEC and all rural telephone companies to participate in the C and F Block auctions for BTAs that include their service area. Alternatively, the Commission should grant the limited waiver requested by TEC in order to ensure the ability of all rural telephone companies to participate in the development and timely deployment of new technologies and services for the benefit of the public residing in rural areas.<sup>2</sup>

TEC also seeks a waiver of the rules to the extent necessary to permit its rural telephone companies to receive the ten percent bidding credit provided other small businesses and to pay for any

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<sup>2</sup>/ 47 u.S.C. § 309(j)(3).

winning bids in ten annual installments utilizing the procedures available to other entities bidding in the auction for licenses in the entrepreneurs' blocks.<sup>3</sup> USIN submits that the Commission's rules should be clarified to ensure consistency in the treatment of small rural telephone companies as small businesses entitled to any and all preferences afforded other small businesses.

The fact that the Commission has established a specific definition of a rural telephone company should negate the application of the general revenue benchmark definition of small businesses to rural telephone companies. Rural telephone companies are small businesses and, as such, should receive the same preferences in the C and F Block auctions which are available to any other small business. Accordingly, the Commission should clarify that the small business preferences are available to all rural telephone companies including TEC, or alternatively grant TEC's waiver to the extent necessary to achieve this result.

USIN submits that an expedited resolution of the issues raised by the TEC Petition will serve the public interest by enabling the C Block auction process to proceed on a timely basis. At present, the U.S. Court of Appeals has granted TEC a stay of the auction while it considers TEC's appeal of the Commission's Rules. By clarifying that TEC can participate as a rural telephone company in the C and F Block auctions for the BTAs that include its telephone service area, the basis for the court's issuance of the stay will be removed, and the auction can proceed.

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<sup>3</sup>/ TEC Petition at 1 and 2.

In the absence of the ability to proceed with the C Block auction, the integrity of the entire PCS 30 mhz auction process may be compromised. The winners of the A and B Block auctions may obtain an insurmountable head-start over C Block licensees which will minimize the opportunity for C Block winners to compete. USIN respectfully urges the Commission to take action expeditiously in order to avoid this outcome.

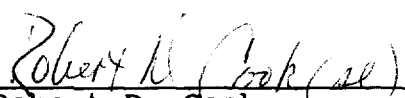
USIN recognizes that TEC's appeal of the Commission's broadband PCS auction rules also raises issues regarding whether the Commission's preferences for designated entities violate Constitutional equal protection requirements. Accordingly, USIN urges the Commission to instill a degree of certainty in the C Block auction process by indicating how it will ensure that its rules comply with equal protection requirements in the event that the award of preferences to designated entities is ultimately determined to violate Constitutional requirements. USIN respectfully suggests that the Commission address this issue by acknowledging that preferences awarded to auction winners who qualify as designated entities will also be given to any auction winner regardless of whether it is a designated entity in the event that preferences for specific groups are determined to be a violation of equal protection.

By taking the actions proposed above, the Commission can go forward with the auction process in a manner that will serve the public interest. Designated entity auction winners will receive the preferences directed to them with certainty; non-designated

entities which win licenses may receive the same preferences if the restriction of the preference award to the designated entity is determined to violate equal protection rights. Although the Constitutionality of the designated entity preferences remains in question, this resolution will provide auction participants with a degree of stability. Concerns regarding the remaining uncertainty are far outweighed by the public interest value of proceeding with the C Block auctions in a timely fashion to better ensure the opportunity for the winners to compete with the A and B Block winners.

Accordingly, USIN respectfully urges the Commission to clarify that its Rules permit TEC to participate in the C and F Block auctions to the extent it requests, and that the Commission take the additional actions recommended herein with regard to the Constitutional challenge to its designated entity preference program. By taking these actions, the Commission will serve the public interest by ensuring that the auction process for the C - Block broadband PCS licenses will go forward on a timely basis.

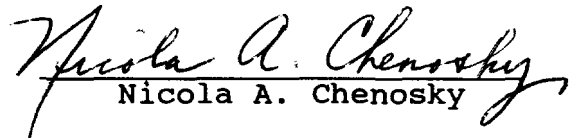
Respectfully submitted,

  
Robert D. Cook  
Chairman and CEO  
U.S. Intelco Networks, Inc.  
4501 Intelco Loop  
P.O. Box 2909  
Olympia, WA 98507

April 3, 1995

**Certificate of Service**

I, Nicola A. Chenosky, of Kraskin & Lesse, 2120 L Street, NW, Suite 520, Washington, DC 20037, hereby certify that a copy of the foregoing Comments on Emergency Petition for Waiver on behalf of U.S. Intelco Networks, Inc. was served on this 3rd day of April 1995, by first class, U.S. mail, postage prepaid, to the following parties:

  
Nicola A. Chenosky

Christopher J. Wright, Esq. \*  
Office of General Counsel  
Federal Communications Commission  
1919 M Street, NW, Room 614  
Washington, DC 20554

Michael F. Altschul, Esq.  
Vice President, General Counsel  
Cellular Telecommunications Industry Association  
1250 Connecticut Avenue, NW, Suite 200  
Washington, DC 20036

Janet Reno, Esq.  
Attorney General  
U.S. Department of Justice  
10th and Constitution Ave., NW  
Washington, DC 20530

Robert B. McKenna  
US WEST, Inc.  
1020 19th Street, N.W. Suite 700  
Washington, DC 20036

Robert B. Nicholson, Esq.  
U.S. Department of Justice  
Appellate Section  
Antitrust Division  
10th and Constitution Ave., NW, Room 3228  
Washington, DC 20530

Stephen D. Gavin, Esq.  
Jeffrey Craven, Esq.  
Besozzi, Gavin & Craven  
1901 L Street, NW, Suite 200  
Washington, DC 20036

Jonathan D. Blake, Esq.  
Edgar F. Czarra, Jr., Esq.  
Harris Weinstein, Esq.  
Robert A. Long, Esq.  
Covington & Burling  
1201 Pennsylvania Avenue, NW  
P.O. Box 7566  
Washington, DC 20044

Mark Wilkerson, Esq.  
Parker, Brantley & Wilkerson  
323 Adams Avenue  
Montgomery, AL 36104

John D. Seiver, Esq.  
James F. Ireland, II, Esq.  
Cole, Raywid & Braverman, LLP  
1919 Pennsylvania Avenue, NW  
Washington, DC 20006

Donald J. Elardo, Esq.  
Larry A. Blosser  
MCI Telecommunications Corporation  
1801 Pennsylvania Avenue, NW  
Washington, DC 20006

Kathleen Q. Abernathy  
AirTouch Communications, Inc.  
1818 N Street, NW, Suite 800  
Washington, DC 20036

\*      **Via Hand Delivery**

Mark A. Stachiw, Esq.  
AirTouch Paging  
12221 Merit Drive, Suite 800  
Washington, DC 20036

George Y. Wheeler, Esq.  
Koteen & Naftalin  
1150 Connecticut Ave., NW, Suite 1000  
Washington, DC 20036

William J. Franklin, Esq.  
William J. Franklin, Chartered  
1919 Pennsylvania Avenue, NW, Suite 300  
Washington, DC 20006-3404

William J. Roughton, Jr.  
Bell Atlantic Personal Communications, Inc.  
1310 North Courthouse Road, 5th Floor  
Arlington, VA 22201

Charles P. Featherstun, Esq.  
BellSouth Corporation  
BellSouth Wireless, Inc.  
BellSouth Personal Communications, Inc.  
1133 21st Street, NW  
Washington, DC 20036

Mr. Kenneth R. Cole, Vice President  
Century Telephone Enterprises, Inc.  
100 Century Park Drive  
Monroe, LA 71203

Joe D. Edge, Esq.  
Drinker, Biddle & Reath  
901 15th Street, NW, Suite 900  
Washington, DC 20005

Phyllis A. Whitten, Esq.  
Swidler & Berlin, Chartered  
3000 K Street, NW, Suite 300  
Washington, DC 20007

Thomas A. Hart, Jr., Esq.  
McManimon & Scotland  
1275 Pennsylvania Avenue, NW, Suite 500  
Washington, DC 20004

John A. Malloy, Esq.  
GO Communications Corporation  
201 North Union, Suite 410  
Alexandria, VA 22314

Eliot J. Greenwald, Esq.  
Fisher, Wayland, Cooper, Leader & Zaragoza, LLP  
2001 Pennsylvania Avenue, NW, Suite 400  
Washington, DC 20006

Patricia Diaz Dennis, Esq.  
Sullivan & Cromwell  
1701 Pennsylvania Avenue, NW  
Washington, DC 20036

William D. Chamblin, III, Vice President  
Infocore, Inc.  
661 Moore Road  
King of Prussia, PA 19406

John D. Pellegrin, Esq.  
Law Offices of John D. Pelligrin, Chartered  
1140 Connecticut Avenue, NW, Suite 606  
Washington, DC 20036

Lois E. Wright, Esq.  
Vice President and Corporate Counsel  
Inner City Broadcasting Corporation  
801 Second Avenue  
New York, NY 10017

Thomas A. Karl  
Karl Brothers, Inc.  
P.O. Box 58040  
Fairbanks, AK 99711

Thomas J. Casey, Esq.  
Skadden, Arps, Slate, Meagher & Flom  
1440 New York Avenue, NW  
Washington, DC 20005-2111

Joseph A. Belisle, Esq.  
Leibowitz and Associates, PA  
One South East Third Avenue, Suite 1450  
Miami, FL 33131

W. Chris Blane, President  
Metrex Communications Group, Inc.  
Five Concourse Parkway, Suite 3100  
Atlanta, GA 30328

Benjamin H. Dickens, Jr., Esq.  
Blooston, Mordkofsky, Jackson & Dickens  
2120 L Street, NW, Suite 300  
Washington, DC 20037



Thomas Gutierrez, Esq.  
David L. Nace, Esq.  
Lukas, McGowan, Nace & Gutierrez, Chtd.  
1111 19th Street, NW, Suite 1200  
Washington, DC 20036

James L. Winston, Esq.  
Rubin, Winston, Diercks, Harris & Cooke  
1730 M Street, NW, Suite 412  
Washington, DC 20036

Henry Solomon, Esq.  
Haley, Bader & Potts  
4350 North Fairfax Drive, Suite 900  
Arlington, VA 22203-1633

Theodore D. Frank, Esq.  
Arent, Fox, Kintner, Plotkin & Kahn  
1050 Connecticut Avenue, NW  
Washington, DC 20036-5339

Mark J. Tauber, Esq.  
Piper & Marbury  
1200 19th Street, NW  
Seventh Floor  
Washington, DC 20036

James L. Wurtz, Esq.  
Pacific Bell Mobile Services  
1275 Pennsylvania Avenue, NW  
Washington, DC 20004

Phillip L. Spector, Esq.  
Paul, Weiss, Rifkind, Wharton & Garrison  
1615 L Street, NW, Suite 1300  
Washington, DC 20036-5694

Richard S. Myers, Esq.  
Law Offices of Richard S. Myers  
1030 15th Street, NW, Suite 908  
Washington, DC 20005

Behram Dalal, Vice President  
Rendall and Associates  
5000 Falls of Neuse Road  
Raleigh, NC 27609

Robert H. Kyle, President  
Kycom, Inc.  
96 Hillbrook Drive  
Portola Valley, CA 94028

Norman P. Leventhal, Esq.  
Leventhal, Senter & Lerman  
2000 K Street, NW, Suite 600  
Washington, DC 20006

Mr. Winston E. Himsworth, Co-Chairman  
US AirWaves, Inc.  
10500 NE 8th Street, Suite 625  
Bellevue, WA 98004

Robert E. Levine, Esq.  
Mullin, Rhyne, Emmons and Topel, PC  
1225 Connecticut Avenue, NW, Suite 300  
Washington, DC 20036

Jere W. Glover, Esq.  
Chief Counsel for Advocacy  
Office of Advocacy  
US Small Business Administration  
409 3rd Street, SW  
Washington, DC 20416

Francine J. Berry, Esq.  
American Telephone and Telegraph Company  
295 North Maple Avenue, Room 3244J1  
Basking Ridge, NJ 07920

Abby Dilley  
James Aidala  
6278 Gentle Lane  
Alexandria, VA 22310

Curtis White  
Allied Communications Group, Inc.  
4201 Connecticut Avenue, NW, Suite 402  
Washington, DC 20008-1158

George C. Dick  
Four Colour Imports, Ltd.  
2843 Brownsboro Road  
Louisville, KY 40206

William D. Jimerson  
Alliance Telecom, Inc.  
34 Woodbine Road  
Pittsford, NY 15534

Melodie A. Virtue  
American Women in Radio and  
Television, Inc.  
1101 Connecticut Ave., NW, Suite 700  
Washington, DC 20036

Frank Michael Panek  
Ameritech Operating Companies  
2000 W. Ameritech Center Drive  
Room 4H84  
Hoffman Estates, IL 60196-1025

Leon C. Levin  
AMSC Subsidiary Corporation  
10802 Park Ridge Boulevard  
Reston, VA 22091

Arch Communications Group  
1800 West Park Drive, Suite 250  
Westborough, MA 01581

Arlene F. Stregé  
117 Howell Drive  
Somerville, NJ 08875

David J. Brugger  
Association of America's Public Television Stations  
1350 Connecticut Avenue, NW, Suite 200  
Washington, DC 20036

James E. Meyers, Esq.  
Baraff, Koerner, Olender & Hochberg, PC  
5335 Wisconsin Avenue, NW, Suite 300  
Washington, DC 20015

Gene A. Bechtel, Esq.  
Bechtel & Cole, Chartered  
1901 L Street, NW, Suite 250  
Washington, DC 20036

Jeffrey T. Bergner, Esq.  
Bergner, Boyette, Bockorny & Clough, Inc.  
1101 16th Street, NW, Suite 500  
Washington, DC 20036

Dennis C. Brown, Esq.  
Brown and Schwaninger  
1835 K Street, NW, Suite 650  
Washington, DC 20006

Albert H. Frazier, Esq.  
Calcell Wireless, Inc.  
2723 Easton Drive  
Burlingame, CA 94010

Philip F. Otto  
California Microwave, Inc.  
990 Almanor Avenue  
Sunnyvale, CA 94086

Massoud Ahmadi  
CALL-HER, LLC  
3 Church Circle, Suite 233  
Annapolis, MD 21401

Mavis A. McCormack  
Capitol Hills Management Corporation  
319 Pennsylvania Avenue, SE  
Washington, DC 20003

Dr. Richard A. Karp  
Catapult Communications Corporation  
160 South Whisman Road  
Mountain View, CA 94041

Michael R. Carper  
CenCall Communications Corporation  
3200 Cherry Creek Drive South  
Denver, CO 80209

Derwood S. Chase, Jr.  
Chase Communications Corporation  
300 Preston Avenue, Suite 403  
Charlottesville, VA 22902

Howard Polsky  
COMSAT World Systems  
6560 Rock Springs Drive  
Bethesda, MD 21045-6141

John D. Lockton  
Corporate Technology Partners  
100 South Ellsworth Avenue, 9th Floor  
San Mateo, CA 94401

Milton Bins  
Council of 100  
1129 20th Street, NW, Suite 400  
Washington, DC 20036

Linda K. Smith, Esq.  
Crowell & Moring  
1001 Pennsylvania Ave., NW  
Washington, DC 20004

Daniel R. Lindemann  
32 Sleepy Hollow Drive  
Wayne, NJ 07470

Calvin H. Johnston  
Datalink Communications  
Corporate Center  
26635 West Agoura Road, Suite 105  
Calabasas, CA 91302

David M. Cohen  
220 West 98th Street  
Aparment 11H  
New York, NY 10025

Laura G. Dooley  
1655 Tippecanoe Court  
Valparaiso, IN 46383

David F. Gencarelli  
1919 Pennsylvania Avenue, NW, Suite 300  
Washington, DC 20006

William Dekay  
Dial Page, Inc.  
P.O. Drawer 10767  
Greenville, SC 29603-0767

John Dudinsky, Jr.  
John Dudinsky & Associates  
305 East Capitol Street, SE  
Washington, DC 20003

Harold K. McCombs, Jr., Esq.  
Duncan, Weinberg, Miller & Pembroke, PC  
1615 M Street, NW, Suite 800  
Washington, DC 20036

Lee L. Selwyn, President  
Economics and Technology, Inc.  
One Washington Mall  
Boston, MA 02108-2617

Edward M. Johnson  
P.O. Box 2688  
Crossville, TN 38557

Peter Arth, Jr.  
Public Utilities Commission of the State of California  
505 Van Ness Avenue  
San Francisco, CA 94102

Aaron I. Fleischman, Esq.  
Fleischman and Walsh  
1400 16th Street, NW, Suite 600  
Washington, DC 20036

Barry Lambergman, Esq.  
Fletcher, Heald & Hildreth  
1300 North 17th Street, 11th Floor  
Rosslyn, VA 22209

Frederick J. Day, Esq.  
Industrial Telecommunications Association, Inc.  
1110 North Glebe Road, Suite 500  
Arlington, VA 22201-5720

Henry Goldberg, Esq.  
Goldberg, Godles, Wiener & Wright  
1229 Nineteenth Street, NW  
Washington, DC 20036

Kathy L. Shobert, Director  
Federal Regulatory Affairs  
General Communication, Inc.  
901 15th Street, NW  
Washington, DC 20006

Carl W. Northrop, Esq.  
Bryan Cave  
700 13th Street, NW, Suite 700  
Washington, DC 20005

Michael S. Hirsch, Vice President of External Affairs  
Geotek Industries, Inc.  
1200 19th Street, NW, Suite 607  
Washington, DC 20036

David L. Jones  
Rural Cellular Association  
215 Roe Street, P.O. Box 38  
Pilot Grove, MO 65276

Gail L. Polivy  
GTE Service Corporation  
1850 M Street, NW, Suite 1200  
Washington, DC 20036

Louis Gurman, Esq.  
Gurman, Kurtis, Blask & Freedman, Chartered  
1400 16th Street, NW, Suite 500  
Washington, DC 20036

Jack Pendleton  
GVNW, Inc./Management  
7125 SW Hampton Street  
Tigard, OR 97223

Henry J. Staudinger  
Route 1, Box 215  
Toms Brook, VA 22660

Henry E. Crawford, Esq.  
Henry E. Crawford Law Office  
1150 Connecticut Avenue, NW, Suite 900  
Washington, DC 20036

Timothy E. Welch  
Hill & Welch  
1330 New Hampshire Avenue, NW, Suite 113  
Washington, DC 20036

Paul J. Fox  
Hughes Aircraft Company  
1000 Connecticut Avenue, NW  
Washington, DC 20036

Jack Taylor  
InterDigital Communications Corporation  
9215 Rancho Drive  
Elk Grove, CA 95624

James F. Stern  
2542 North 9th Street  
Wauwatosa, WI 53226

Sidney E. Pinkston  
P&P Investments  
2970 Lincoln Plaza  
500 North Akard  
Dallas, TX 75201

James M. Rhoads  
JMP Telecom Systems, Inc.  
P.O. Box 292557  
Xettering, OH 45429

John J. Mandler  
1030 North Monroe Street  
Arlington, VA 22201

M. John Bowman, Jr.  
McNair & Sanford, PA  
1155 15th Street, NW  
Washington, DC 20005

Wayne V. Black, Esq.  
Keller and Heckman  
1001 G Street, NW, Suite 500 W  
Washington, DC 20001

Albert H. Kramer, Esq.  
Keck, Mahin & Cate  
1201 New York Avenue, NW  
Penthouse Suite  
Washington, DC 20005

Robert B. Kelly, Esq.  
Kelly, Hunter, Mow & Povich, PC  
1133 Connecticut Avenue, NW  
Washington, DC 20036

Gary M. Epstein, Esq.  
Latham & Watkins  
1001 Pennsylvania Avenue, NW  
Suite 1300  
Washington, DC 20004-2505

Leslie A. Taylor  
Leslie Taylor Associates  
6800 Carlynn Court  
Bethesda, MD 20817-4302

Leslie R. Walls  
7112 Terry Lane  
Falls Church, VA 22042

Michael G. Oliva, Esq.  
Loomis, Ewert, Ederer, Parsley, Davis & Gotting  
232 South Capitol Avenue, Suite 1000  
Lansing, MI 48933

N.H. Thisse  
Enakee Partnership  
95 Turnpike Street  
Canton, MA 02021

Mark H. Duesenberg  
1300 I Street, NW, Suite 900 West  
Washington, DC 20005

Kathleen O'Connor  
2139 Newport Plaza, NW  
Washington, DC 20037

R. Gerard Salemme, Senior Vice President  
of Federal Affairs  
McCaw Cellular Communications, Inc.  
1150 Connecticut Avenue, NW, 4th Floor  
Washington, DC 20036

Alex J. Lord  
Mercury Cellular Communications  
236 E. 6400 South  
Murray, UT 84107

Sheila Slocum Hollis, Esq.  
Metzger, Hollis, Gordon & Mortimer  
1275 K Street, NW, Suite 1000  
Washington, DC 20005

Michael R. Rickman  
7140 Gammwell Drive  
Cincinnati, OH 45230

Michael R. Gardner, Esq.  
Law Offices of Michael R. Gardner, PC  
1150 Connecticut Avenue, NW, Suite 710  
Washington, DC 20036

Judith St. Ledger-Roty, Esq.  
Reed, Smith, Shaw & McClay  
1200 18th Street, NW  
Washington, DC 20036

Michael D. Kennedy, Director of Regulatory  
Relations  
Motorola, Inc.  
Government Relations Office  
1350 I Street, NW, Suite 400  
Washington, DC 20005

Oye Ajayi-Obe  
1521 Heather Hollow Circle  
Suite 21  
Silver Spring, MD 20904

Alden F. Abbott, Chief Counsel  
National Telecommunications & Information  
Administration  
U.S. Department of Commerce  
14th and Constitution Avenue, NW, Room 4713  
Washington, DC 20230

David Cosson, Esq.  
National Telephone Coop. Association  
2626 Pennsylvania Avenue, NW  
Washington, DC 20037

Edward R. Wholl  
NYNEX Telephone Companies  
120 Bloomingdale Road  
White Plains, NY 10605

David L. Hill, Esq.  
O'Connor & Hannan  
1919 Pennsylvania Avenue, NW, Suite 800  
Washington, DC 20006-3483

Lisa M. Zaina, Esq.  
OPASTCO  
21 Dupont Circle, NW, Suite 700  
Washington, DC 20036

Stephen Curtin  
PCNS-NY, Inc.  
17 Battery Place, Suite 1200  
New York, NY 10004-1256

Richard L. Vega, Jr., President  
Phase One Communications, Inc.  
3452 Lake Lynda Drive, Suite 115  
Orlando, FL 32817

John Hearne  
Point Communications Company  
100 Wilshire Boulevard, Suite 1000  
Santa Monica, CA 90401

Daryl L. Avery  
Public Service Commission of the District of  
Columbia  
450 Fifth Street, NW  
Washington, DC 20001

Ray Communications, Inc.  
1850 Centennial Park Drive, Suite 650  
Reston, VA 22091-1517

Michael J. Shortley, III  
Rochester Telephone Corporation  
180 South Clinton Avenue  
Rochester, New York 14646

A. Thomas Carroccio, Esq.  
Santarelli, Smith & Carroccio  
1155 Connecticut Avenue, NW  
Washington, DC 20036

Paul J. Sinderbrand, Esq.  
Sinderbrand & Alexander  
888 Sixteenth Street, NW, Suite 610  
Washington, DC 20006-4103

Jay C. Keithley, Esq.  
Sprint Corporation  
1850 M Street, NW, Suite 1100  
Washington, DC 20036

Stephan C. Sloan  
170 Westminster Street, Suite 701  
Providence, RI 02903

Steven L. Dickerson, Esq.  
Strasburger & Price, LLP  
2600 One American Avenue  
600 Congress Avenue  
Austin, TX 78701-3288

Robert S. Foosaner  
Nextel Communications, Inc.  
601 13th Street, NW  
Suite 1100 South  
Washington, DC 20005

Charles N. Andreae, III  
Andreae & Associates, Inc.  
1133 Connecticut Avenue, NW, Suite 700  
Washington, DC 20036

Roy L. Hayes, President  
Systems Engineering, Inc.  
1851 Alexander Bell Drive, Suite 104  
Reston, VA 22091

James Love, Director  
Taxpayer Assets Project  
P.O. Box 19367  
Washington, DC 20036

Gustave Jappe  
Telepoint Personal Communications, Inc.  
405 Broad Avenue  
Palisades Park, NJ 07650

Mark J. Golden  
The Personal Communications Industry Association  
1019 19th Street, NW  
Washington, DC 20036

Terrence P. McGarty  
The Telmarc Group, Inc.  
24 Woodbine Road  
Florham Park, NJ 07932

Thomas Crema  
3100 P Street, NW  
Washington, DC 20007

Thomas J. Jasien  
4659A South 28th Road  
Arlington, VA 22206

Gary B. Allan, Chief  
Telecommunications Standards Division  
US Department of Agriculture  
Rural Electrification Administration  
Washington, DC 20250

Ronald K. Greenhalgh  
National Rural Electric Cooperative Association  
1800 Massachusetts Avenue, NW  
Washington, DC 20036

Robert J. Moffitt  
Associate Administrator for Procurement Assistance  
US Small Business Administration  
409 3rd Street, SW  
Washington, DC 20416

Robert Cook, Chairman & CEO  
U.S. Intelco Networks, Inc.  
4501 Intelco Loop  
Lacey, WA 98503

Mark A. Bell, Vice President of Operations  
United Native American Telecommunications, Inc.  
1604 Sandy Lane  
Burlington, WA 98233-3400

Mary McDermott  
United States Telephone Association  
1401 H Street, NW, Suite 600  
Washington, DC 20005-2136

Donna M. Torres  
Urban Telecommunications, Inc.  
330 Coster Street  
Bronx, NY 10474

Jeffrey L. Sheldon  
Sean A. Stokes  
Utilities Telecommunications Council  
1140 Connecticut Avenue, NW, Suite 1140  
Washington, DC 20036

Henry L. Baumann  
National Association of Broadcasters  
1771 N Street, NW  
Washington, DC 20036

Thomas J. Keller, Esq.  
Verner, Liipfert, Bernhard, McPherson & Hand  
901 15th Street, NW, Suite 700  
Washington, DC 20005

Philip L. Verveer, Esq.  
Willkie, Farr & Gallagher  
1155 21st Street, Suite 600  
Washington, DC 20036-3384

Ward Leber  
18552 MacArthur Blvd., Suite 200  
Irvine, CA 92715

William E. Zimsky  
P.O. Box 3005  
Durango, CO 81302

Mary C. Metzger, President  
Wireless Services Corporation  
127 Richmond Hill Road  
New Canaan, CT 06840

George Benson, C.E.O  
Wisconsin Wireless Communications  
North 615 Communication Drive, Suite 2  
Appleton, WI 54915

Quentin L. Breen  
3 Waters Park Drive, Suite 231  
San Mateo, CA 94403-1144

Andrea L. Johnson  
University of California at Davis  
School of Law  
Davis, CA 95617

Tom Gorman  
Western Wireless, Inc.  
915 Broadway  
Vancouver, WA 98660

Valley Management, Inc.  
550 West Indian School Road  
Phoenix, AZ 85013-3200

Jane HP Moffat  
Venus Wireless, Inc.  
915 Broadway  
Vancouver, WA 98660

James R. Martell, President  
Rural Telephone Company  
704 West Madison  
P.O. Box 969  
Glenns Ferry, ID 83623

Peter J. Mitchell  
Minority Business Enterprise Legal Defense and  
Education Fund, Inc.  
220 I Street, NW, Suite 280  
Washington, DC 20002

Stuart F. Feldstein, Esq.  
Fleischman and Walsh  
1400 Sixteenth Street, NW  
Washington, DC 20036

Alan R. Shark  
American Mobile Telephone Association  
1835 K Street, NW, Suite 203  
Washington, DC 20006

Association of American Railroads  
50 F Street, NW  
Washington, DC 20001

David E. Weisman, Esq.  
Alan S. Tilles, Esq.  
Meyer, Faller, Weisman and Rosenberg, PC  
4400 Jenifer Street, NW, Suite 380  
Washington, DC 20015

Quincy Rodgers, Esq.  
General Instrument Corporation  
1155 21st Street, NW, 4th Floor  
Washington, DC 20036

John B. Bankson, Jr. Esq.  
Hopkins & Sutter  
888 16th Street, NW  
Washington, DC 20006

Ronald L. Plesser, Esq.  
Piper & Marbury  
1200 19th Street, NW, Suite 700  
Washington, DC 20036

David J. Kaufman, Esq.  
Brown, Nietert & Kaufman, Chartered  
1920 N Street, NW, Suite 660  
Washington, DC 20036

Peter H. Feinberg, Esq.  
Michael S. Schooler, Esq.  
Werner K. Hartenberger, Esq.  
Dow, Lohnes & Albertson  
1255 Twenty-Third Street, NW  
Washington, DC 20037

Robert Weigend, Esq.  
Schnader, Harrison, Segal & Lewis  
1119 19th Street, NW  
Washington, DC 20036

James D. Ellis  
SBC Communications, Inc.  
175 East Houston, Room 1218  
San Antonio, TX 78205

Philip L. Malet, Esq.  
Steptoe & Johnson  
1330 Connecticut Avenue, NW  
Washington, DC 20036

Cary S. Tepper, Esq.  
Meyer, Faller, Weisman & Rosenberg, PC  
4400 Jenifer Street, NW, Suite 380  
Washington, DC 20015